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IN THE

Supreme Court of the United States

October Term, 1941. No. 751

WILLIAM H. TAYLOR,
Petitioner,

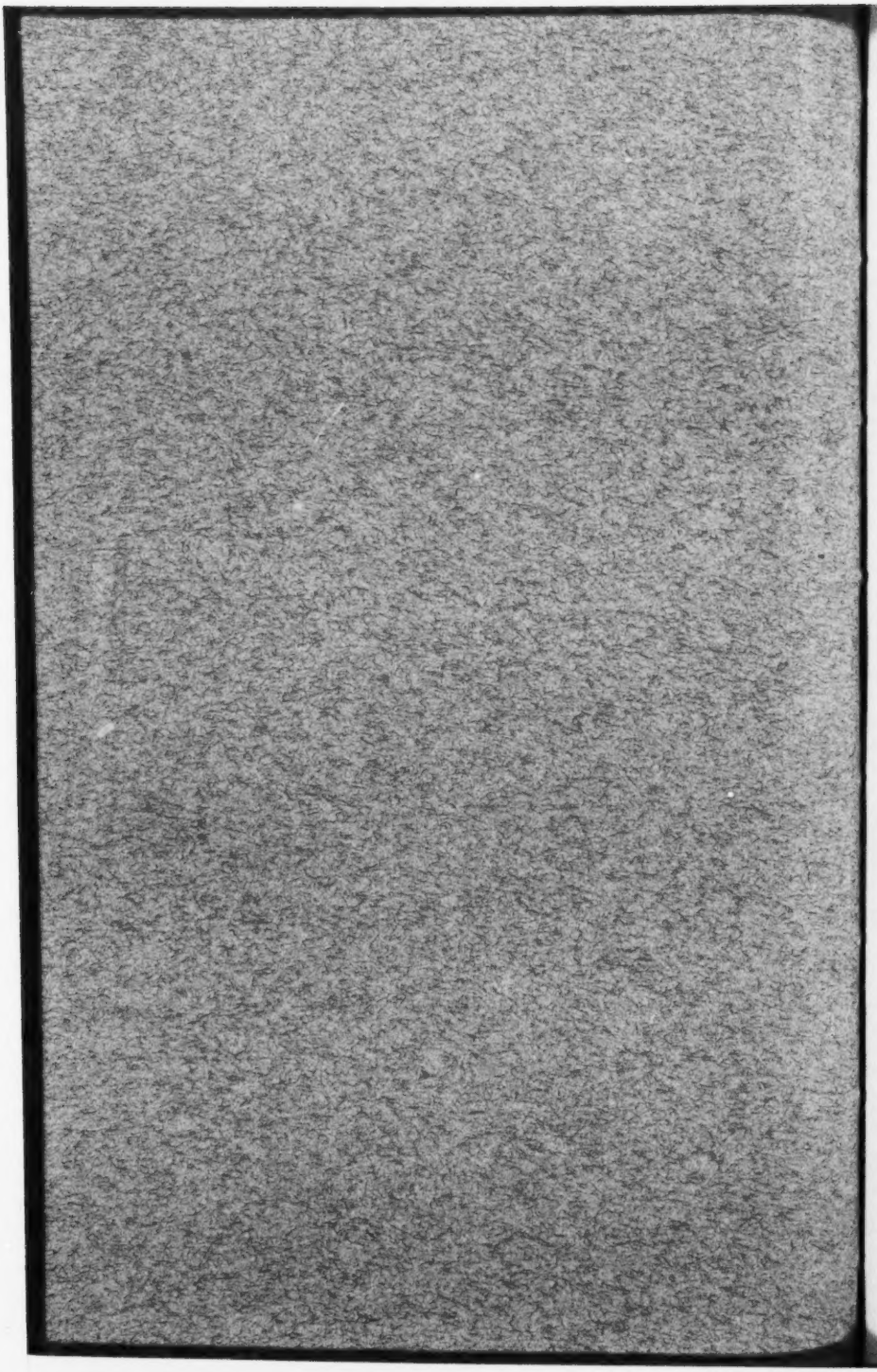
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit and Brief In Support Thereof.

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M-74



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IN THE
SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1941 No. .

William H. Taylor,

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner above named prays that a writ of *certiorari* issue to review the judgment (R. 21) of the Circuit Court of Appeals for the Third Circuit, entered in the above entitled matter August 22, 1941, reversing the order of the United States Board of Tax Appeals (R. 13) which reversed the respondent's determination and decided that there is no deficiency of $3,040.78 gift tax.

OPINIONS BELOW.

The memorandum opinion of the United States Board of Tax Appeals, entered February 1, 1940, is printed at Record, page 12, and is unreported.

The opinion of the Circuit Court of Appeals for the Third Circuit, filed August 22, 1941, is printed at Record, page 15, and is not yet reported.

JURISDICTION.

Final decision of the Circuit Court of Appeals for the Third Circuit was rendered August 22, 1941.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by Act of Congress of February 13, 1925, Chapter 229, Sec. 1, 43 Stat. 938; 28 U.S.C.A., Sec. 347.

QUESTION PRESENTED.

In 1934 and 1935 the petitioner transferred property to trustees, to divide the same into four separate trusts and to pay the net income therefrom to each of four minor children of the tax-

payer's brother for their respective lives, granting to said trustees during the minority of each child the sole discretion to apply part or all of the income or accumulated income to the education and support of each child otherwise fully entitled to the income, and directing the trustees to accumulate the unexpended income for each such child and to pay the accumulations over to such child at the age of twenty-one. Under the foregoing facts, were the transfers by petitioner gifts of present interests, entitling him to four exclusions of $5,000 each pursuant to Section 504(b) of the Revenue Act of 1932, or, as contended by the Commissioner of Internal Revenue, were such transfers gifts of "future interests in property"?

STATUTES AND REGULATIONS INVOLVED.

Revenue Act of 1932, Chapter 209, 47 Stat. 169:

Sec. 501. Imposition of tax.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in Section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or non-resident, of property by gift.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift

is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. The tax shall not apply to a transfer made on or before the date of the enactment of this Act.

* * * * *

Sec. 504. Net Gifts.

(a) General Definition. The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 505.

(b) Gifts Less than $5,000. In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first $5,000 of such gifts to such person shall not, for the purpose of subsection (a), be included in the total amount of gifts made during such year.

Treasury Regulations 79 (1936 Ed.):

Art. 11. Future interests in property. No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. "Future interests" is a legal term, and includes reversions, remainders, and other

interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. * * *

STATEMENT OF THE CASE.

During 1934 the petitioner executed an irrevocable trust and transferred to the trustees thereunder certain securities of the total value of $71,400 (R. 3, 10, 14). The foregoing trust instrument directed the trustees to divide the principal into four equal shares, each share to be held for the use and benefit of each of four children of the taxpayer's brother and the net income therefrom to be paid to each such child for his or her life (R. 3, 8, 15-16). The trust instrument further provided that the income "payable under the terms hereof" to any minor child should be accumulated by the trustees for each such child and paid over to him or her when he or she should attain the age of twenty-one years, "unless in the opinion of Trustees, in their sole discretion, such income or accumulated income should at any time during the minority of such child be needed for his or her proper education and support, in which event Trustees shall apply any part or all of such

income and/or accumulated income, as Trustees in their sole discretion may deem expedient, for the education and support of such child during his or her minority" (R. 3, 8, 15-16).

The trust instrument provided for distribution of the principal of the trust upon death of the life tenants either before or after their attaining the age of twenty-one (R. 8-9).

During 1935 the petitioner irrevocably transferred additional securities of a total value of $104,762.75 to the trustees under and in accordance with the terms of the aforesaid trust instrument (R. 4, 7, 10, 11).

The four beneficiaries of the trust were under twenty-one years of age during the years 1934 and 1935 (R. 4-5, 12, 14), and the value of each life interest given to such beneficiaries in each of the years 1934 and 1935 exceeded $5,000 (R. 5, 14-15).

In his Federal gift tax return for the year 1934 petitioner claimed four exclusions totalling $16,327.62 for the gifts made in that year (R. 3, 4); and in his Federal gift tax return for the year 1935 petitioner claimed four exclusions totalling $20,000 for the gifts made in such year (R. 3, 5, 7, 11). Respondent disallowed all of the exclusions thus claimed on the ground that the gifts were of future and not present interests, and he proposed deficiency gift tax liabilities of $252.18 and $3,040.87 for the years 1934 and 1935, respectively (R. 6-7, 11, 14).

The aforesaid deficiency of $252.18 for the year 1934 was paid on October 25, 1935 (R. 14). On August 10, 1937, petitioner filed his petition with the United States Board of Tax Appeals alleging that respondent erred in (1) not allowing four exclusions totalling $20,000 for the gifts made in 1935, (2) not allowing four exclusions totalling $16,327.62 for gifts made in 1934 and (3) not giving credit for the $252.18 overpayment of 1934 gift taxes against gift taxes due for the year 1935 (R. 1, 2-9). In the Stipulation of Facts filed with the Board of Tax Appeals the respondent conceded that he had erred in failing to allow at least one exclusion of $5,000 for each of the years 1934 and 1935 (R. 11-12).

In its decision entered on February 1, 1940, the Board of Tax Appeals determined that the petitioner is entitled to four exclusions of $5,000 each for the gifts made in 1935, and that there is no deficiency in gift tax for that year (R. 12-13). On Petition for Review filed by respondent herein, the Circuit Court of Appeals for the Third Circuit (Judge Maris dissenting) reversed the decision of the Board of Tax Appeals and held that petitioner herein is entitled to but one exclusion of $5,000 because the gifts made in 1935 were gifts of future interests within the purview of the decision of this Court in **United States v. Pelzer**, 312 U.S. 399 (1941) (R. 15-21).

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

1. In holding that the gifts to the four minor beneficiaries were gifts of future interests in property, rather than of present interests in property, and that petitioner is not entitled to four exclusions for the year 1935 in the total amount of $20,000 under Section 504(b) of the Revenue Act of 1932.

2. In reversing the order of the Board of Tax Appeals determining that there is no deficiency in gift tax liability for the year 1935.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Circuit Court of Appeals, holding that the gifts in trust for minor beneficiaries, whereunder the trustees have discretion to apply income to the education and support of such beneficiaries and are directed to pay over the unexpended accumulated income to each beneficiary as he or she becomes twenty-one years of age, are gifts of future interests as to which petitioner is not entitled to the exclusions provided in Section 504(b) of the Revenue Act of 1932, is a decision in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit, on the same matter, in the case of **Rheinstrom v. Commissioner**, 105 F. (2d) 642 (C.C.A. 8th, 1939).

2. The decision of the Circuit Court of Appeals, holding that the gifts in trust for minor beneficiaries are gifts of future interests as to which petitioner is not entitled to the exclusions provided in Section 504(b) of the Revenue Act of 1932, is inconsistent with and indistinguishable from the decision by the same Circuit Court of Appeals, on the same matter, in the case of **Commissioner v. Krebs**, 90 F. (2d) 880 (C.C.A. 3d, 1937).

3. The decision of the Circuit Court of Appeals, holding that the gifts in trust for minor beneficiaries are gifts of future interests as to which petitioner is not entitled to the exclusions provided in Section 504(b) of the Revenue Act of 1932, is in conflict with the decisions of the United States District Courts on the same matter, in:

Kinney v. Anglim, 1941 Prentice-Hall Federal Tax Service, Par. 62,961, 1941 Commerce Clearing House Inheritance, Estate and Gift Tax Service, Par. 10,100 (N.D. Cal. 1941), not yet officially reported;

Wieboldt v. United States, 1940 Prentice-Hall Federal Tax Service, Par. 62,729, 1940 Commerce Clearing House Federal Tax Service, Par. 9539 (N.D. Ill. 1940);

Noyes v. Hassett, 20 F. Supp. 31 (D. Mass. 1937).

4. The Circuit Court of Appeals, in holding that the gifts in trust for minor beneficiaries are gifts of future interests as to which petitioner is not entitled to the exclusions provided in Section 504(b) of the Revenue Act of 1932, has decided a federal question in a way probably in conflict with the decisions of this Court in **United States v. Pelzer**, 312 U.S. 399 (1941), and **Ryerson v. United States**, 312 U.S. 405 (1941).

5. The decision of the Circuit Court of Appeals, holding that the gifts in trust for minor beneficiaries are gifts of future interests as to which petitioner is not entitled to the exclusions provided in Section 504(b) of the Revenue Act of 1932, is a decision which involves an important question of federal law which is presently in a state of confusion and which has not been, but should be, settled by this Court.

WHEREFORE, petitioner prays that this Court may issue its writ of *certiorari* to review the decision of the court below.

WILLIAM H. TAYLOR,

BY

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